IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 725 of 2005

Between:

M/s. Amara Raja Batteries Ltd. Karakambadi - 517 520,
Tirupati, Chittoor District. Represented by its Executive Chairman,
Mr. Ramachandra N. Galla

... PETITIONER

AND

1 Transmission Corporation of A.P. Ltd. Vidyuithsoudha,

Khairatabad, Hyderabad,

Rep by its Chairman and Managing Director.
2 Southern Power Distribution Company of A.P. Ltd.,

19-3-13, Upstairs of Hero Honda Show Room,
Renigunta Road, Tirupathi - 517 501,

Rep by its Chairman and Managing Director.
3 A.P. Gas Power Corporation Limited, 201, 2nd Floor,

My Home Sarovar Plaza, Secretariat Road, Hyderabad, A.P.

Rep by its Managing Director.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction declaring the action of the respondents 1 and 2 in not giving effect to the share transfer and allocation of power made by the 3rd respondent under the share certificate dt. 22-12-2004 for the billing month of December 2004 as illegal arbitrary and consequently direct respondents 1 and 2 revise the bill for the month of December 2004 by excluding the cost of 5,65,907 units (gross 6,65,772 units) of power allocated by the 3rd respondent in favour of the petitioner.

Counsel for the Petitioner:MR.C.V.NAGARJUNA REDDY

Counsel for the Respondent Nos.1&2: MR.M.SREERAMULU REDDY, STANDING COUNSEL.

The Court at the stage of admission made the following :

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.NO.725 OF 2005

ORDER:

The petitioner is an industry, engaged in the manufacture of Lead Acid Batteries and their accessories; and other related items. The 3rd respondent, A.P. Gas Power Corporation Limited, is a power generating company, with gas as fuel, established through the joint venture, with the participation of the 1st respondent and various shareholders. The petitioner is one of the participating industries in the 3rd respondent. As per the Memorandum of Understanding (MOU), entered into between the various parties, the participating industries are entitled to be supplied power, corresponding to their shareholding, at a fixed tariff. The petitioner claims that its shareholding, in terms of power supplied, is 3 M.W. As per the arrangement among the parties, while the power corresponding to the shares of the participating industries is supplied at a preferential and subsidized tariff, and any power, utilized over and above such entitlement, is subject to ordinary tariff, which is almost double.

The 2nd respondent is a power distributing company, and sister concern of the 1st respondent. The 2nd respondent served a bill dated 07-01-2005, on the petitioner, indicating that the petitioner is liable to pay at the ordinary tariff on 6,33,506 units, for the month of December, 2004. This is, in addition to the bill payable at concessional rates, on the power supplied to it, on the basis of

shareholding. The petitioner contends that the stage-II agreement provides for transfer of supply from one participating industry, to the other. According to it, one of the shareholders M/s Larsen and Toubro Ltd., surrendered its 4,02,000 equity shares equivalent to 1.5 M.W., at stage-II, and in turn the same was transferred to the petitioner. It is stated that power utilized by the petitioner, for which the ordinary tariff is levied, is one, which it is entitled, on account of the said transfer, and it is not permissible for the respondents 1 and 2, to levy the normal tariff.

A counter affidavit is filed on behalf of respondents 1 and 2. It is stated that the billing month under the agreement commences from 24th of a month and ends with 23rd of the succeeding month, and according to the relevant Clauses in the MOU, the allocation or transfer of power in favour of any participating industries has to take place on the basis of a notice issued, well in advance. It is urged that the transfer of shares in favour of the petitioner was effected only on 22-12-2004, and unless the stipulated period expires, it was not entitled to utilize the energy, on the basis of such transfer. The levy of tariff in the bill for December, 2004 is sought to be justified.

Sri C.V.Nagarjuna Reddy, learned counsel for the petitioner submits that the MOU provides for transfer of shares and the corresponding entitlement of power from one participating agency to another, and that the transfer, equivalent to 1.5 M.W., took place in favour of the petitioner, much before the commencement of the billing month of December. He submits that M/s Larsen and Toubro Ltd., had informed the 3rd respondent, well in advance, of its intention to transfer its shareholding, and the latter in turn made an allotment of the corresponding energy to the petitioner.

Sri M.Sreeramulu Reddy, learned Standing Counsel for the respondents 1 and 2, on the other hand, submits that, whenever a participating industry fails to surrender its allotted energy, the 1st respondent gets the right to be allotted the same. According to him, it is only when a proper transfer, in accordance with clause 2.6 takes place, that a participating company would be entitled to utilize the energy, over and above its initial and original entitlement. After referring to the correspondence, that ensued between the parties, he submits that no valid transfer of energy from M/s Larsen and Toubro Ltd., took place, in favour of the petitioner before the commencement of the billing month, and as such, the petitioner was liable to pay the consumption charges, at ordinary tariff, for the excess power utilized by it.

The controversy in this writ petition relates to the method of billing for part of the

energy consumed by the petitioner, during the billing month of December. It is a matter of record that the 3rd respondent is brought into existence, with joint participation of the 2nd respondent and other private agencies, called as participating industries. The petitioner is one such industry. At stage-I, the generating capacity of the 3rd respondent was 99 M.W., and at stage-II, it is 172 M.W. Separate tripartite memoranda of understandings are executed, covering these two stages. The power generated by the 3rd respondent is allotted to various participating industries, depending on their shareholding. The entitlement of the petitioner is 3 M.W. Under clause 17-A of the MOU of stage-I, the surplus power has invariably be allotted to the 1st respondent. For stage-II, a different mechanism is provided, for transfer of energy. The relevant clauses read as under:

> **"Clause 2.2: Transfer of Energy**:
>
> APGPCL agree that the Participating Industries may transfer their share of energy to their sister concern[s] subject to the condition that the said sister concern[s] is/are located within the State of Andhra Pradesh and is/are HT consumers of A.P.Transco.
>
> The Participating Industries agree that any such transfer by them to their sister concern shall be made on month to month basis – i.e. from the beginning of the Billing Month to the end of the Billing Month and not a part of the Billing Month.
>
> The Participating Industries also agree that for such transfer, an application shall be made to APGPCL and prior approval of APGPCL shall be obtained before actual availment by the transferee concern[s] and before the commencement of the next Billing Month.
>
> The Participating Industries agree that such transfer shall also be informed to the A.P. Transco. simultaneously.
>
> The APGPCL agree that the A.P. Transco. shall have the right to sell its share of energy and power to its consumers, who may include members of APGPCL at such rates as may be determined by A.P. Transco."

> "**Clause 2.6**: **Non-Utilisation of Energy by any of the Participating Industries to full extent**:
>
> When a Participant Industry, for any reason is unable to utilize its full share of energy from APGPCL, it shall give an advance notice of at least 15 days before the Billing Month to APGPCL. APGPCL shall then reallocate the surrendered energy of the Participant Industry on pro-rata basis, among those of the rest of the Participants who require additional power. However, when the advance notice is not received by APGPCL within the stipulated period mentioned above, the unutilized power shall be

fully allocated to A.P. Transco".

One of the participating industries, M/s Larsen and Toubro, intended to surrender and transfer its shareholding to the tune of 1.5 M.W. The petitioner came forward to acquire the same. Through its letter dated 22-12-2004, the 3rd respondent confirmed the transfer. It is on the basis of such acquisition, that it has utilized the power, equivalent to 1.5 M.W., in addition to its original entitlement of 3.M.W., during the month of December, 2004. While the petitioner contends that the transfer of 1.5 M.W. took place in terms of clause 2.6, of MOU, of stage-II, before the commencement of the billing month of December, the respondents 1 and 2, insist that the transfer, if at all, has taken place in the middle of the billing month, and at the most, it can become effective from the next billing month, i.e. January, 2005.

There is no dispute that the billing month commences from 24th of a month, and extends up to the 23rd of the succeeding month. The MOU of stage-II provides for transfer of the share of energy from one participating industry to the other, on month-to- month basis. Clauses 2.2 and 2.6 prescribe the procedure therefor. Under Clause 3.4 of the MOU, of stage-II, the 3rd respondent is vested with the power to raise the bills. The 1st respondent is expected to extend its assistance in preparation of the bills based on the meter readings. It is also not in dispute that the agency or authority, that has the last word, in the matter of allotment or transfer of energy from one participating industry, to the other, is the 3rd respondent. The 1st respondent has hardly any say in the matter. It has the right only to receive the allocation of power unutilized, by any participating industry, if advance notice, as to transfer, is not issued. In that view of the matter, the 1st respondent ought to have ascertained the matter from the 3rd respondent as to whether there was any transfer of energy from the share of M/s Larsen and Toubro Ltd., in favour of the petitioner and if so, the extent and the period from which the transfer became effective. Had it been a case where the 3rd respondent informed the 1st respondent that the transfer took place during the middle of the billing month of December, there certainly could have been justification for the latter, to apply the tariff, as it did through the impugned bill. Neither in the counter affidavit nor during the course of hearing, it is stated that such an ascertainment, or verification has taken place.

Learned counsel for the petitioner placed before this Court, copies of letter dated 06-11-2004, addressed by M/s Larsen and Toubro Ltd., to the 3rd respondent for transfer of its share of power, as well as the statements showing details of excess eligibility for the billing month of December 2004, and urged that the transfer took place much before the commencement of the billing month of December. This Court is not inclined to record any definite finding on this aspect. Having regard to the fact that the 3rd respondent is the ultimate authority to clarify these aspects, the 1st respondent is under obligation to verify the matter from them and take further action. Depending on the information that the 1st respondent may receive on this aspect, it can revise the bill for the month of December, or may keep the same intact.

Hence, the writ petition is disposed of, directing that,

a. the 1st respondent shall verify from the 3rd respondent as to the date, with effect from which the transfer of share of energy of M/s Larsen and Toubro, had taken place in favour of the petitioner, and take consequential steps, in the matter of revision of bills.

b. If the information so secured discloses that the transfer took place before the commencement of billing month of December, the bill shall stand revised and uniform tariff shall be applied for the entire quantum of energy, used by the petitioner. On the other hand, if the transfer took place during the middle of the billing month of December, the impugned bill shall hold good.

c. Till such an exercise is undertaken, the respondents 1 and 2 shall not insist upon the petitioner to pay the differential tariff, on that part of the energy indicated in the bill, as was transferred from the share of M/s Larsen and Toubro Ltd.

There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt. 18-02-2005.

Note:

L.R. copy to be marked.

(B/o)

KO

To

(One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy

for his Lordship's kind perusal)

1 The Chairman and Managing Director,

Transmission Corporation of A.P. Ltd., Vidyuthsoudha,

Khairatabad, Hyderabad.

2 The Chairman and Managing Director,

Southern Power Distribution Company of A.P. Ltd.,

19-3-13, Upstairs of Hero Honda Show Room,
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3 The Managing Director, A.P. Gas Power Corporation Limited,

201, 2nd Floor, My Home Sarovar Plaza, Secretariat Road,

Hyderabad, A.P.

4 8 L.R. Copies.

5 The Under Secretary, Ministry of Law, Justice and Company

Affairs, Union of India, New Delhi.

6 The Secretary, A.P.Advocates' Association, Library,

High Court buildings, Hyderabad.

7 Two C.D. copies.